

ESTTA Tracking number: **ESTTA559492**

Filing date: **09/14/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

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|---------------------------------------|---|
| Name | Balance Bar Company |
| Granted to Date of previous extension | 09/15/2013 |
| Address | 115 E. Stevens Avenue Suite 202 Valhalla, NY 10595 UNITED STATES |
| Attorney information | R. Glenn Schroeder Schroeder Law PC 110 Cooper Street #605 Babylon, NY 11702 UNITED STATES docket@schroederlawpc.com,gschroeder@schroederlawpc.com Phone:631-649-6109 |

Applicant Information

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|------------------------|---|------------------------|------------|
| Application No | 85751520 | Publication date | 03/19/2013 |
| Opposition Filing Date | 09/14/2013 | Opposition Period Ends | 09/15/2013 |
| Applicant | GFA Brands, Inc. Suite 260 115 West Century Road Paramus, NJ 07652 UNITED STATES | | |

Goods/Services Affected by Opposition

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| Class 029. Opposed goods and services in the class: Nut and seed-based snack bars |
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Grounds for Opposition

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| Priority and likelihood of confusion | Trademark Act section 2(d) |
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Marks Cited by Opposer as Basis for Opposition

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|-----------------------|--------------|-----------------------|------------|
| U.S. Registration No. | 2636101 | Application Date | 11/20/1999 |
| Registration Date | 10/15/2002 | Foreign Priority Date | NONE |
| Word Mark | BALANCE GOLD | | |
| Design Mark | | | |
| Description of | NONE | | |

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|----------------|---|
| Mark | |
| Goods/Services | Class 030. First use: First Use: 2000/06/30 First Use In Commerce: 2000/06/30 SNACK BARS |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 2745850 | Application Date | 01/16/2001 |
| Registration Date | 08/05/2003 | Foreign Priority Date | NONE |
| Word Mark | BALANCE | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 029. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Protein based, nutrient-dense snack bars | | |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 2999244 | Application Date | 04/27/2004 |
| Registration Date | 09/20/2005 | Foreign Priority Date | NONE |
| Word Mark | BALANCE BAR GOLD | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 029. First use: First Use: 2005/05/00 First Use In Commerce: 2005/05/00 Protein-based, nutrient-dense snack bars | | |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 3036771 | Application Date | 05/10/2004 |
| Registration Date | 12/27/2005 | Foreign Priority Date | NONE |
| Word Mark | BALANCE BAR | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 029. First use: First Use: 2005/07/00 First Use In Commerce: 2005/07/00 Protein-based, nutrient-dense snack bars | | |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 3436917 | Application Date | 11/30/2006 |
| Registration Date | 05/27/2008 | Foreign Priority Date | NONE |
| Word Mark | BALANCE BARE | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 029. First use: First Use: 2007/03/20 First Use In Commerce: 2007/03/20 Protein based, nutrient-dense snack bars Class 030. First use: First Use: 2007/03/20 First Use In Commerce: 2007/03/20 Grain-based food bars also containing fruits and nuts | | |

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3760265 | Application Date | 05/12/2009 |
| Registration Date | 03/16/2010 | Foreign Priority Date | NONE |
| Word Mark | BALANCE PURE | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 029. First use: First Use: 2008/03/31 First Use In Commerce: 2008/03/31 PROTEIN-BASED NUTRIENT DENSE SNACK BARS Class 030. First use: First Use: 2008/03/31 First Use In Commerce: 2008/03/31 CEREAL BASED SNACK BARS | | |

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| U.S. Registration No. | 3937988 | Application Date | 08/03/2010 |
| Registration Date | 03/29/2011 | Foreign Priority Date | NONE |
| Word Mark | BALANCE | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 005. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Nutritional supplements; dietary food supplements Class 030. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Cereal-based, rice-based, or granola-based snack bars and snack foods | | |

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 4062171 | Application Date | 08/03/2010 |
| Registration Date | 11/29/2011 | Foreign Priority Date | NONE |
| Word Mark | BALANCE BAR | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 030. First use: First Use: 1999/07/30 First Use In Commerce: 1999/07/30 Cereal-derived, rice-based and granola-based snack bars | | |

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| Attachments | 101-6_Notice_of_Opposition.pdf(1243698 bytes) |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

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| Signature | /r. glenn schroeder/ |
| Name | R. Glenn Schroeder |

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| Date | 09/14/2013 |
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 85/751,520
Filed: October 11, 2012
Published for Opposition on March 19, 2013
Trademark: EARTH BALANCE

BALANCE BAR COMPANY,

Opposer,

v.

GFA BRANDS, INC.,

Applicant.

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Opposition No.

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

BALANCE BAR COMPANY ("Opposer"), a Delaware corporation, with a place of business at 115 E. Stevens Avenue, Suite 202, Valhalla, New York 10595, believes that it will be damaged by registration of the mark shown in Serial No. 85/751,520 to GFA BRANDS, INC., ("Applicant"), which application was published for opposition on March 19, 2013, and hereby opposes, through its attorneys, the registration of said mark for "nut and seed-based snack bars" in International Class 29.

As grounds for opposition it is alleged that:

1. Opposer is a Delaware corporation, with a place of business at 115 E. Stevens Avenue, Suite 202, Valhalla, New York 10595.
2. Opposer sells, and has sold, snack bars; protein-based, nutrient-dense snack bars;

grain-based food bars also containing fruits and nuts; and cereal-based, rice-based, or granola-based snack bars and snack foods.

3. Opposer utilizes the marks BALANCE; BALANCE BAR; BALANCE GOLD; BALANCE BAR GOLD; BALANCE BARE; and BALANCE PURE (hereinafter the “Trademarks”), as trademarks indicating the source of origin for its products.

4. Since prior to the filing date of the above-identified application, Opposer has been using the Trademarks in interstate commerce in connection with the goods described in Paragraph 2.

5. Opposer is the owner of United States Registration No. 2,636,101 for the mark BALANCE GOLD as used in connection with snack bars, in International Class 30. The foregoing registration is valid, and in full force and effect.

6. Opposer is the owner of United States Registration No. 2,745,850 for the mark BALANCE as used in connection with protein based, nutrient-dense snack bars, in International Class 29. The foregoing registration is valid, and in full force and effect.

7. Opposer is the owner of United States Registration No. 2,999,244 for the mark BALANCE BAR GOLD as used in connection with protein-based, nutrient-dense snack bars, in International Class 29. The foregoing registration is valid, and in full force and effect.

8. Opposer is the owner of United States Registration No. 3,036,771 for the mark BALANCE BAR as used in connection with protein-based, nutrient-dense snack bars, in International Class 29. The foregoing registration is valid, and in full force and effect.

9. Opposer is the owner of United States Registration No. 3,436,917 for the mark BALANCE BARE as used in connection with protein-based, nutrient-dense snack bars in International Class 29; and grain-based food bars also containing fruits and nuts, in International Class 30. The foregoing registration is valid, and in full force and effect.

10. Opposer is the owner of United States Registration No. 3,760,265 for the mark BALANCE PURE as used in connection with protein-based nutrient dense snack bars in

International Class 29; and cereal based snack bars, in International Class 30. The foregoing registration is valid, and in full force and effect.

11. Opposer is the owner of United States Registration No. 3,937,988 for the mark BALANCE as used in connection with cereal-based, rice-based, or granola-based snack bars and snack foods, in International Class 30. The foregoing registration is valid, and in full force and effect.

12. Opposer is the owner of United States Registration No. 4,062,171 for the mark BALANCE BAR as used in connection with cereal-derived, rice-based and granola-based snack bars, in International Class 30. The foregoing registration is valid, and in full force and effect.

13. Opposer has expended substantial amounts of money, time and effort in advertising and promoting its Trademarks throughout the United States so that the public has come to associate and attribute usage of the Trademarks with Opposer. Moreover, as a result of these efforts, Opposer has developed a family of BALANCE marks having substantial goodwill and recognition in the marketplace.

14. Applicant's mark is confusingly similar to Opposer's Trademarks whereby use of Applicant's mark on "nut and seed-based snack bars", as recited in Applicant's application, will create a likelihood of confusion, mistake or deception among the purchasing public.

15. The "nut and seed-based snack bars" recited in Applicant's application are substantially similar, if not identical, to the goods offered by Opposer (mentioned hereinabove in Paragraph 2) under the Trademarks, and to the goods listed in Opposer's registrations identified hereinabove in Paragraphs 5 to 12, all of such goods being likely to travel through similar channels of trade.


16. The registration of Applicant's mark in connection with "nut and seed-based snack bars" would be in direct conflict with the proper function of a trademark; that is, as a designation of the sole and exclusive origin of goods or services, considering Opposer's prior use of and registration of its Trademarks.

17. Opposer, as the owner of valid federal trademark registrations and as the prior user of such marks, will be damaged if registration of Applicant's mark, as published, is granted.

WHEREFORE, Opposer respectfully requests that this Opposition be sustained, that the above-identified application be rejected and that the registration of the mark shown in Application Serial No. 85/751,520 be refused.

Respectfully submitted,
BALANCE BAR COMPANY

Dated: 14 September 2013

By: 

R. Glenn Schroeder
Schroeder Law PC
110 Cooper Street #605
Babylon, New York 11702
Telephone: (631) 649-6109
Facsimile: (631) 649-8126

Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** has been served via first-class mail this 14th day of September, 2013 upon the following:

Johanna M. Wilbert, Esq.
Quarles & Brady LLP
411 East Wisconsin Avenue
Suite 2040
Milwaukee, Wisconsin 53202-4497



R. Glenn Schroeder